

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MARCH 24, 2003

SENATE BILL

No. 354

Introduced by Senator Speier

February 19, 2003

An act to amend Sections 1871.4, 11760, and 11880 of, and to add Section 11661.8 to, the Insurance Code, and to amend Section 139.3 of, and to add Section 4600.2 to, the Labor Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 354, as amended, Speier. Workers' compensation insurance: fraud: limits.

Existing law provides that it is unlawful to knowingly make specified false or fraudulent statements in connection with obtaining compensation under or reducing the premium or cost of a workers' compensation insurance policy. Existing law specifies a maximum fine of \$50,000 for a violation of these provisions.

This bill would raise the maximum fine for a violation of these provisions to \$100,000.

Existing law generally regulates the terms of workers' compensation insurance policies. Existing law requires an employer to provide specified medical services that are reasonably required to cure or relieve an injury suffered by an employee in the course of employment.

This bill would preclude an insurer from insuring an employer for more than 15 one-hour visits to a chiropractor by an employee in connection with any claim made under the policy, unless the employee has obtained the approval of a physician for additional visits. The bill

would provide that an insured employer is not required to provide, and is not liable for, more than 15 of these visits without physician approval.

Existing law prohibits a physician from referring a person for specified goods or services if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral. A violation of this provision is a crime.

This bill would add referrals for services provided by outpatient surgical centers, as defined, to the referrals subject to this prohibition. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it would not become operative unless SB 229 is enacted and becomes operative.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1871.4 of the Insurance Code is
- 2 amended to read:
- 3 1871.4. (a) It is unlawful to do any of the following:
- 4 (1) Make or cause to be made any knowingly false or fraudulent
- 5 material statement or material representation for the purpose of
- 6 obtaining or denying any compensation, as defined in Section
- 7 3207 of the Labor Code.
- 8 (2) Present or cause to be presented any knowingly false or
- 9 fraudulent written or oral material statement in support of, or in
- 10 opposition to, any claim for compensation for the purpose of
- 11 obtaining or denying any compensation, as defined in Section
- 12 3207 of the Labor Code.
- 13 (3) Knowingly assist, abet, conspire with, or solicit any person
- 14 in an unlawful act under this section.
- 15 (4) Make or cause to be made any knowingly false or fraudulent
- 16 statements with regard to entitlement to benefits with the intent to



1 discourage an injured worker from claiming benefits or pursuing
2 a claim.

3 For the purposes of this subdivision, “statement” includes, but
4 is not limited to, any notice, proof of injury, bill for services,
5 payment for services, hospital or doctor records, X-ray, test
6 results, medical-legal expense as defined in Section 4620 of the
7 Labor Code, other evidence of loss, injury, or expense, or payment.

8 (5) Make or cause to be made any knowingly false or fraudulent
9 material statement or material representation for the purpose of
10 obtaining or denying any of the benefits or reimbursement
11 provided in the Return-to-Work Program established under
12 Section 139.48 of the Labor Code.

13 (6) Make or cause to be made any knowingly false or fraudulent
14 material statement or material representation for the purpose of
15 discouraging an employer from claiming any of the benefits or
16 reimbursement provided in the Return-to-Work Program
17 established under Section 139.48 of the Labor Code.

18 (b) Every person who violates subdivision (a) shall be punished
19 by imprisonment in county jail for one year, or in the state prison,
20 for two, three, or five years, or by a fine not exceeding one hundred
21 thousand dollars (\$100,000) or double the value of the fraud,
22 whichever is greater, or by both imprisonment and fine.
23 Restitution shall be ordered, including restitution for any medical
24 evaluation or treatment services obtained or provided. The court
25 shall determine the amount of restitution and the person or persons
26 to whom the restitution shall be paid.

27 (c) Any person who violates subdivision (a) and who has a prior
28 felony conviction of that subdivision, of former Section 556, of
29 former Section 1871.1, or of Section 548 or 550 of the Penal Code,
30 shall receive a two-year enhancement for each prior conviction in
31 addition to the sentence provided in subdivision (b).

32 The existence of any fact that would subject a person to a penalty
33 enhancement shall be alleged in the information or indictment and
34 either admitted by the defendant in open court, or found to be true
35 by the jury trying the issue of guilt or by the court where guilt is
36 established by plea of guilty or nolo contendere or by trial by the
37 court sitting without a jury.

38 (d) This section shall not be construed to preclude the
39 applicability of any other provision of criminal law that applies or
40 may apply to any transaction.

1 SEC. 2. Section 11661.8 is added to the Insurance Code, to
2 read:

3 11661.8. An insurer shall not insure an employer for more
4 than 15 one-hour visits to a chiropractor by an employee in
5 connection with any claim made under the policy, unless the
6 employee has obtained the approval of a physician licensed
7 pursuant to Section 2050 of the Business and Professions Code for
8 additional visits.

9 SEC. 3. Section 11760 of the Insurance Code is amended to
10 read:

11 11760. (a) It is unlawful to make or cause to be made any
12 knowingly false or fraudulent statement, whether made orally or
13 in writing, of any fact material to the determination of the
14 premium, rate, or cost of any policy of workers' compensation
15 insurance, for the purpose of reducing the premium, rate, or cost
16 of the insurance. Any person convicted of violating this
17 subdivision shall be punished by imprisonment in the county jail
18 for one year, or in the state prison for two, three, or five years, or
19 by a fine not exceeding one hundred thousand dollars (\$100,000),
20 or double the value of the fraud, whichever is greater, or by both
21 imprisonment and fine.

22 (b) Any person who violates subdivision (a) and who has a
23 prior felony conviction of the offense set forth in that subdivision
24 shall receive a two-year enhancement for each prior conviction in
25 addition to the sentence provided in subdivision (a). The existence
26 of any fact that would subject a person to a penalty enhancement
27 shall be alleged in the information or indictment and either
28 admitted by the defendant in open court, or found to be true by the
29 jury trying the issue of guilt or by the court where guilt is
30 established by plea of guilty or nolo contendere or by trial by the
31 court sitting without a jury.

32 SEC. 4. Section 11880 of the Insurance Code is amended to
33 read:

34 11880. (a) It is unlawful to make or cause to be made any
35 knowingly false or fraudulent statement, whether made orally or
36 in writing, of any fact material to the determination of the
37 premium, rate, or cost of any policy of workers' compensation
38 insurance issued or administered by the State Compensation
39 Insurance Fund for the purpose of reducing the premium, rate, or
40 cost of the insurance. Any person convicted of violating this

subdivision shall be punished by imprisonment in the county jail for one year, or in the state prison for two, three, or five years, or by a fine not exceeding one hundred thousand dollars (\$100,000), or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 5. Section 139.3 of the Labor Code is amended to read:

139.3. (a) Notwithstanding any other provision of law, to the extent those goods and services are paid for pursuant to Division 4 (commencing with Section 3200), it is unlawful for a physician to refer a person for clinical laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, outpatient surgical center, or diagnostic imaging goods or services whether for treatment or medical-legal purposes if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral.

(b) For purposes of this section and Section 139.31, the following shall apply:

(1) “Diagnostic imaging” includes, but is not limited to, all X-ray, computed axial tomography magnetic resonance imaging, nuclear medicine, positron emission tomography, mammography, and ultrasound goods and services.

(2) “Immediate family” includes the spouse and children of the physician, the parents of the physician, and the spouses of the children of the physician.

(3) “Physician” means a physician as defined in Section 3209.3.

(4) A “financial interest” includes, but is not limited to, any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution,

1 subsidy, or other form of direct or indirect payment, whether in
2 money or otherwise, between a licensee and a person or entity to
3 whom the physician refers a person for a good or service specified
4 in subdivision (a). A financial interest also exists if there is an
5 indirect relationship between a physician and the referral
6 recipient, including, but not limited to, an arrangement whereby
7 a physician has an ownership interest in any entity that leases
8 property to the referral recipient. Any financial interest transferred
9 by a physician to, or otherwise established in, any person or entity
10 for the purpose of avoiding the prohibition of this section shall be
11 deemed a financial interest of the physician.

12 (5) A “physician’s office” is either of the following:

13 (A) An office of a physician in solo practice.

14 (B) An office in which the services or goods are personally
15 provided by the physician or by employees in that office, or
16 personally by independent contractors in that office, in accordance
17 with other provisions of law. Employees and independent
18 contractors shall be licensed or certified when that licensure or
19 certification is required by law.

20 (6) The “office of a group practice” is an office or offices in
21 which two or more physicians are legally organized as a
22 partnership, professional corporation, or not-for-profit
23 corporation licensed according to subdivision (a) of Section 1204
24 of the Health and Safety Code for which all of the following are
25 applicable:

26 (A) Each physician who is a member of the group provides
27 substantially the full range of services that the physician routinely
28 provides, including medical care, consultation, diagnosis, or
29 treatment, through the joint use of shared office space, facilities,
30 equipment, and personnel.

31 (B) Substantially all of the services of the physicians who are
32 members of the group are provided through the group and are
33 billed in the name of the group and amounts so received are treated
34 as receipts of the group, and except that in the case of
35 multispecialty clinics, as defined in subdivision (l) of Section 1206
36 of the Health and Safety Code, physician services are billed in the
37 name of the multispecialty clinic and amounts so received are
38 treated as receipts of the multispecialty clinic.



(C) The overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined by members of the group.

(7) “Outpatient surgical center” means a surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code, when the clinic renders services that are paid for pursuant to Division 4 (commencing with Section 3200).

(c) (1) It is unlawful for a licensee to enter into an arrangement or scheme, such as a cross-referral arrangement, that the licensee knows, or should know, has a principal purpose of ensuring referrals by the licensee to a particular entity that, if the licensee directly made referrals to that entity, would be in violation of this section.

(2) It shall be unlawful for a physician to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for a referred evaluation or consultation.

(d) No claim for payment shall be presented by an entity to any individual, third-party payor, or other entity for a good or service furnished pursuant to a referral prohibited under this section.

(e) A physician who refers to or seeks consultation from an organization in which the physician has a financial interest shall disclose this interest to the patient or if the patient is a minor, to the patient’s parents or legal guardian in writing at the time of the referral.

(f) No insurer, self-insurer, or other payor shall pay a charge or lien for any good or service resulting from a referral in violation of this section.

(g) A violation of subdivision (a) shall be a misdemeanor. The appropriate licensing board shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has committed unprofessional conduct. Violations of this section may also be subject to civil penalties of up to five thousand dollars (\$5,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney. A violation of subdivision (c), (d), (e), or (f) is a public offense and is punishable upon conviction by a fine not exceeding fifteen thousand dollars (\$15,000) for each violation and appropriate

1 disciplinary action, including revocation of professional licensure,
2 by the Medical Board of California or other appropriate
3 governmental agency.

4 SEC. 6. Section 4600.2 is added to the Labor Code, to read:

5 4600.2. Notwithstanding Section 4600, an employer that is
6 insured or self-insured pursuant to Section 3700 is not required to
7 provide, and is not liable for, more than 15 one-hour visits to a
8 chiropractor by an employee in connection with any compensable
9 claim under this division unless the employee has obtained
10 approval for additional visits from a physician licensed pursuant
11 to Section 2050 of the Business and Professions Code.

12 SEC. 7. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 SEC. 8. *This act shall not become operative unless Senate Bill*
22 *229 of the 2003–04 Regular Session of the Legislature is enacted*
23 *and becomes operative.*

